

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

H. LEE HORNBECK, GREGORY
F. HURLEY and STEPHAN GAIS,

Civil Action No.: 11-CIV-6605(BSJ)

Plaintiffs,

- Against

**DECLARATION OF MATTHEW
A. WINDMAN**

FUSIONTECH, INC.,

Defendant.

MATTHEW A. WINDMAN, ESQ. hereby declares, under penalty of perjury pursuant to
28 U.S.C. § 1746, as follows:

1. I am a member of the Bar of this Court and an associate of The Bostany Law Firm, PLLC, attorneys for Plaintiffs in this case, and I make this Declaration in support of Plaintiffs' Order to Show Cause for an Order of Attachment.

2. Defendant FusionTech, Inc. (hereinafter "Defendant") is a Nevada corporation with headquarters in China. See page 1 of Senior Convertible Promissory Notes signed by Lixin Wang, CEO of Fusionthech, Inc. attached hereto as Exhibits A, B, C, D and E.

3. In addition, a search of the New York State Department of State, Division of Corporations database reveals no entries for Defendant. See NYS Department of State Division of Corporations Search Results attached hereto as Exhibit F. Thus, Defendant is a foreign corporation not qualified to do business in New York.

4. Defendant maintained and maintains a bank account located at TD Bank at 2 Wall Street in the City, County and State of New York, under the account name "FusionTech, Inc. Private Placement Escrow Account." See Affidavit of Plaintiff Gregory F. Hurley annexed

as Exhibit G.

5. It is Plaintiffs' understanding that Defendant is seeking to transfer all of its assets that remain in New York to another account in the State of Pennsylvania and that by September 23, 2011, Defendant will not have any assets left in the State of New York. See Affidavit of Plaintiff Frank DiMartini annexed as Exhibit H.

6. The account is believed to contain \$600,000.00 as of September 22, 2011. This is money from U.S. creditors pursuant to various loan agreements due to September 2011. *Id.*

7. Defendant has consented to jurisdiction in New York State. See Section 8.5 of Exhibits A, B, C, D and E.

8. On or about March 2011, Defendant executed several notes in connection with the closing of the first tranche of a private placement with accredited investors, including Plaintiffs, totaling an aggregate principal amount of \$3,600,000.00. See SEC Form 8-K annexed as Exhibit I.

9. On March 9, 2011, Mr. Gais executed with Defendant a Senior Convertible Promisory Note which provided for a loan to Defendant in the amount of \$200,000. The Note is annexed as Exhibit A.

10. On March 28, 2011, Mr. Gais executed with Defendant a Senior Convertible Promisory Note which provided for a loan to Defendant in the amount of \$175,000. The Note is annexed as Exhibit B.

11. On March 21, 2011, Mr. Hornbeck executed with Defendant a Senior Convertible Promisory Note which provided for a loan to Defendant in the amount of \$25,000. The Note is annexed as Exhibit C.

12. On March 9, 2011, Mr. Hurley executed with Defendant a Senior Convertible

Promissory Note which provided for a loan to Defendant in the amount of \$250,000. The Note is annexed as Exhibit D.

13. On March 28, 2011, Mr. Hornbeck executed with Defendant a Senior Convertible Promissory Note which provided for a loan to Defendant in the amount of \$50,000. The Note is annexed as Exhibit E.

14. The notes issued in the first tranche, in the aggregate principal amount of \$1,100,000.00 became due and payable in full on September 6, 2011. *Id.*

15. The second tranche of notes, which were issued on March 21, 2011, in a principal amount of \$1,836,000.00, were due and payable on September 19, 2011. *Id.*

16. The third tranche of notes, which were issued on March 28, 2011 in a principal amount of \$664,000, are due and payable on September 26, 2011. *Id.*

17. As of September 22, 2011, Defendant had failed to pay the principal and interest due on the notes issued in the first tranche. *Id.*

18. As of September 22, 2011, Defendant had failed to pay the principal and interest due on the notes issued in the second tranche due on September 19, 2011. *Id.*

19. As a result, FUSIONTECH is in default under the notes.

20. On September 13, 2011, Lixin Wang, Chief Executive Officer of FusionTech, Inc., wrote to the company's former counsel, Newman & Morrison LLP, requesting that it transfer funds that the law firm was holding for Defendant pursuant to an escrow agreement to Stevens & Lee, a law firm based in Philadelphia. The letter is annexed as Exhibit J.

21. On September 22, 2011, Plaintiffs filed a Complaint against Defendant in the Southern District of New York. The Complaint is attached as Exhibit K.

22. This Motion is being brought by way of Order to Show Cause because of the

emergent need for relief as the plaintiffs' rights are in immediate jeopardy of being thwarted, diminished, and/or extinguished.

23. Plaintiffs have not moved by Order to Show Cause before on this matter.

24. For the reasons stated in the accompanying Brief, we respectfully request that Plaintiffs' Order to Show Cause for an Order of Attachment be granted in all respects.

Dated: New York, New York
September 22, 2011


MATTHEW A. WINDMAN, ESQ.